77-578

In the Supreme Court of the United States

OCTOBER TERM, 1977

Marion Briggs

v.

North Carolina

APPEAL FROM THE UNITED STATES 4TH CIRCUIT COURT OF APPEALS
RICHMOND, VIRGINIA

JURISDICTIONAL STATEMENT

appellant pro se

Marion Briggs
208 Sunset Drive
Chapel Hill, N.C. 27514

TABLE OF CONTENTS

Appendix

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

NO.

MARION BRIGGS,
Appellant,

v.

STATE OF NORTH CAROLINA.
Appellee.

On Appeal From The Fourth Circuit
Court of Appeals
Richmond, Virginia

JURISDICTIONAL STATEMENT

THE OPINIONS BELOW

The Memorandum Opinion and Order from the United States District Court, Eastern District of North Carolina appears herein as Appendix A. No other written opinions have been delivered.

The appellant asserts that there can be no opinion in an unadjudicated action with the exception of ex parte facts. Appellant further contends that the application of companion cases are not valid for the reason stated above. Johnson v. Mississippi, cited by the Fourth Circuit Court of Appeals, was not applicable since one person alone cannot wage a conspiracy.

Observation will be had that where in Johnson v. Mississippi,, picketing may be subject to local ordinances and must comply with the need to acquire permits, the action by Briggs was to seek petition which the First Amendment clearly states is lawful action for the redress of grievance and for which no permit is required.

THE JURISDICTION INVOKED

The jurisdiction of the Court is invoked pursuant to 28 U.S.C. § 1441(c) to avoid

the misapplication by a pretexually applied statute of North Carolina which denied protection of the First Amendment. Should appellee prevail, this statute is one that addresses disorderly conduct. But the conduct in which the appellant was engaged was petitioning which is federally protected. Invokement is also had by way of auxiliary writs under provisions of 28 U.S.C. 1651(a) to aid in the jurisdiction of removal. Grounds upon which jurisdiction of this Court is pursued are as follows:

(i) The nature of the proceedings herein is to effectuate the usage and application of law with writs in aid of jurisdiction directed by this Court pursuant to Rules 21 F.R.A.P.

(ii) The date of the judgment sought to be reviewed was handed down on July 18,

1977. The Notice of Appeal was filed on August 17, 1977.

(iii) The statutory provision relied upon for jurisdiction of this appeal is 28 U.S.C.A. § 1651.

(iv) The belief is held that American Fire & Gas Co. v. Finn (1951 341 U.S. 6.71 S.CT. 5.34 95 L.ed 702) has valid application. Also believed valid is the decision by Chief Justice Warren that "... in recent years we have increasingly looked to the specific guarantees of the Sixth Amendment to determine whether a state crim criminal trial was conducted with due process of law." (87 S.CT. at 1922)

QUESTIONS PRESENTED BY THE APPEAL

The following questions are presented by this appeal:

(i) Whether the First Amendment protects petitioning in its entirety.

(ii) Whether the Sixth Amendment assures public hearing as well as trials.

(iii) Whether the District Court can ex mero muto intercede for the defaulting party.

STATEMENT OF THE FACTS

Marion Briggs, known hereinafter as the Appellant, is a citizen within the meaning of the Fourteenth Amendment, and resides in North Carolina, is subject to its laws and is privileged to its protection. Appellant is also subject to the laws of the Nation and likewise enjoys the protection and guarantees embodied in the Constitution of the United States.

This action was commenced in the North Carolina Supreme Court and comes to this Court as an appeal from the Fourth Circuit

Court of Appeals where the Eastern District Court of North Carolina's judgment was confirmed.

Appellant was the target of a series of prosecutions by the misapplications of North Carolina statutes where none of the charges could be sustained by the application of evidence or by statutory structure.

North Carolina manifestly and intentionally with malice aforethought denied the appellant protection of its laws and access to the appellate process, and said appellee willfully applied processes not sanctioned by the laws of North Carolina or constitutional provisions.

Appellant instituted an action in the Supreme Court of North Carolina complaining of malicious prosecution pursuant to the provision of North Carolina's General Statute 7A.25 accompanied with a judgment

demand for three million dollars.

After the expiration of thirty days, and not having received a reply with regard to his complaint of malicious prosecution, Appellant returned to the court on September 20, 1976, and offered for filing a Notice of Default due to the court's failure to respond and indicated that application would be made to the court for the judgment prayed in the complaint.

The clerk of the court refused to attest the Notice of Default. After stamping a date and applying his initials thereto, the clerk related that he had fulfilled the requirement of his office. The appellant insisted upon attestation as in 28 U.S.C. 1691. This insistence was viewed by the clerk as disorderly conduct, and in accord with that view, caused the incarceration of the appellant.

Appellant was released from incarceration on the condition that appellant would not again return to said clerk's office. Pursuant to 28 U.S.C. § 1441 and § 1443, appellant removed action to the Eastern District Court of North Carolina. However, the clerk of the Eastern District Court refused to permit filing under 28 U.S.C. § § 1443 The belief is held that jurisdiction is present in § 1441

There followed, a hearing set for Monday, December 13, 1976, Criminal Number 76-50-CR-5, in the United States District Court, Eastern District Court of North Carolina. Appellant was present as directed only to find that a deposition of Remand Judgment had been made some two weeks earlier under the direction of Judge Larkins, Jr. Rulings and motions and ex parte for default decree were, therefore, avoided in the absence of the appellant.

THE FEDERAL QUESTIONS PRESENTED ARE SUBSTANTIAL

It is believed that the questions herein are substantial in that they evolved in a setting that posed legal injury to federal rights guaranteed by the Constitution of the United States. Further, these questions were raised at the earliest possible time and were vigorously sustained throughout the proceedings. These questions carry profound public interest as they modify existing law.

The court's earlier refusal to recognize the appellant's Sixth Amendment protection pursuant to the "public trial" and "confrontation" requirements give substance to the questions.

The appellant came to the Eastern District Court by way of removal from North Carolina's Supreme Court where the First

Amendment question was to be tested and at a time set for hearing. However, without notice or stipulation, the appointed time was advanced and the hearing was conducted in the absence of the appellant. The aforesaid action is alleged to be in conflict with due process of law and fairness provided for in the Sixth Amendment.

The court, in the absence of a motion from appellee, ex mero muto entered a motion in their stead thereby accomplishing in the court what the Constitution was designed to guard against as is embodied in the Sixth Amendment.

CONCLUSION

Request was served on the fourth Circuit Court of Appeal to separately make finding and conclusion of law, that the same be certified, and that a true copy be served on the appellant pursuant to Rules 52 of the Federal Rules of Civil Procedure. Failure of the court to respond leaves the appellant to thus conclude that the judges were unable to set forth conclusions of law as no true copy has materialized.

Therefore, it is concluded that Rules 55 should be applied to perfect a Decree of default and that the principles consistent with the judgment role be so instructed. Further, that dilatory excursion be restricted to practical and deliberate speed. (Brown v. Kenron Aluminum & Glass Corp, 1973, CA8 Iowa 477 F 2d 526)

A default admits the cause of action. (Grinell v. Bebb 85 N.W. 467 126 Mich. 157) Default is a reality upon failure to appear as well as to file pleadings. (Bill Benson Motors Inc. v. Kozak 48 Cal. R.P.T. R. 123, 127.38 Ca2nd Supp. 937)

That the ex mero muto motion of the district judge be reversed and that the allegation of prejudice set out in affadavit be accepted as true in that it is unopposed. (D'Urso v. Wildheim 347 N.E. 2d 463 -28 and F.C.A. § 144.

It is further concluded that appellee expected aid in the manner that has evolved, or some event analagous to it, for in the alternative the appellee would not have been mute when faced with a three million dollars.

That pusuant to 28 U.S.C. § 1651 mandamus should issue in aid of jurisdiction

to the extent that it is agreeable with the applications and principles of law.

It is finally concluded that four judges have acted in the absence of authority and in effect impacted upon the court sytem to the detriment of due process and the litigant.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

Marion Briggs

v.

North Carolina

Petition for Writs of Prohibition and Mandamus

Comes now appellant Marion Briggs, pursuant to 28 U.S.C. § 1651 who prays that mandamus will issue in the above entitled action and the alternative provision of the prohibition writ to give aid and supervision to jurisdiction herein. This aid is essential to jurisdiction as all other remedies available to appellant have been exhausted.

It appearing that no likelihood exists for grounding remand on the authority of 28 U.S.C.S. § 1447(c) it is subject to the appropriatness of mandamus. (Therma-

tron Products Inc. v. Hermandorfer.(1976 U.S. 46.2 Fd. 2d 542 96. S.CT. 584)

TheHonorable Judge Larkins, Jr. of the U. S. Eastern District Court of North Carolina should be the object of the directions and supervision herein prayed. It is further prayed that the remand order be reversed, and the clear and certain duty of the court insues to institute the the ministeri ial performance of entering a default decree to which the appellant is entitled.

Particular attention is directed to the Honorable Judge Larkins, Jr. who felt a greater comfort by regarding the appellant's petition as "paperwriting" than as a petition, which may be notably significant, in that it identifies a bias which scholars of law entertain of the lay person. However, it is the appellants belief and contention that the Honorable Judge is not privileged to deny justice for reason-

ing his personal biases and prejudices which was the subject of an affadavit filed in the District Court

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF NORTH CAROLINA
RALEIGH DIVISION

No. 76-0050-CR-5

North Carolina	)	MEMORANDUM
	)	OPINION
v.	)	AND
	)	Order
Marion Wendell Briggs	)	

LARKINS, Chief Judge:

In this petition for removal, Briggs seeks to remove his state prosecution for committing a nuisance in or near the North Carolina Department of Justice building in contravention of N.C.G.S. § 14-132(d)(3). Briggs contends that the State initiated this prosecution in an effort to deprive the petitioner of his First Amendment right to petition the government for redress.

The record before the court indicates that the State of North Carolina has not responded to this petition. Ap-

parently, Briggs has not secured service to this paperwriting upon the State as required by Rule 4, F. R. Civ. P. Despite the absence of the State's response, the court will ex mero moto entertain a motion to remand this prosecution to the North Carolina courts without an evidentiary hearing. STATE OF NORTH CAROLINA V. GRANT, 452 F.2d 780 (4 Cir. 1972); BELL V. TAYLOR, 509 F.2d 808 (5 Cir. 1975)(where the removal allegations were frivolous or legally insufficient, the court is not required to hold a hearing prior to entering the remand order).

Briggs has bottomed the removal request on 28 U.S.C. § 1441. This provision authorizes removal of civil action only. However, the civil rights removal statute, 28 U.S.C. § 1443, sanctions removal of state criminal prosecutions in certain limited instances. The cases indicate

that removal is appropriate under § 1443 when the petitioner asserts rights which stem from a specific statutory provision, but not the broad protection of the First and Fourteenth Amendments. PEOPLE OF THE STATE OF CALIFORNIA V. SANDOVAL, 434 F.2d 635 (6 Cir. 1970), cert. denied, 402 U.S. 909, 91 S. Ct. 1381, 28 L.Ed.2d 649 (1971); CITY OF CHESTER V. ANDERSON, #$& F.2d 823 (3d Cir. 1965), cert. denied, 384 U.S.1003, 86 S.Ct. 1910, 16 L.Ed.2d 1017 (1966). Since Briggs' request is grounded solely on the broad tenets of the First and Fourteenth Amendments, the petition does not pose legally sufficient grounds for removal Accordingly, this prosecution should be remanded for disposition by the North Carolina Courts.

NOW THEREFORE, in accordance with the foregoing, it is ORDERED that this petition for removal be, and the same is

hereby DENIED, and that this case be, and the same is hereby remanded to the Wake County, North Carolina Clerk of Court for prosecution in that court;

FURTHER ORDERED that the Clerk shall serve copies of this ORDER upon the petitioner and the State of North Carolina.

Let this ORDER be entered forthwith.

John D. Larkins, Jr.
Chief Judge

At Trenton, North Carolina

November 26, 1976

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CASE # 77-1176

MARION BRIGGS,
Appellant,
v.

NORTH CAROLINA
Appellee.

NOTICE OF APPEAL

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

I.

I. Notice is hereby given that Marion Briggs the Appellant above name hereby appeal to the Supreme Court of the United States from the final order remanding this action to the North Carolina for disposition entered on July 18th 1977

This appeal is taken pursuant to Const. Art III § 2; 28 USCS § 1251

Sig Marion Briggs

Rcd.
8/17/77

Date 8/17/1977
119 S. Graham St.
Chapel Hill, No. Car.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

CASE # 77-1176

MARION BRIGGS
Appellant,
vs.
NORTH CAROLINA
Appellee

REQUEST FOR FACTS AND CONCLUSIONS

PURSUANT TO RULES 51 ROLES OF CIVIL PRECEDURE APPELLANT ABOVE NAMED REQUEST THAT THE FINDING OF FACTS AND CONCLUSIONS HAS CONFORMED TO THE REQUIREMENTS OF RULES 52. PLEASE CERTIFY, AND CAUSE A TRUE COPY TO BE SERVED UPON APPELLANT.

BROWN VS. KENRON ALUMINUM & GLASS CORP. (1973 CA8- IOWA) 477 F2d 526. Cross v. Pasley (1959 CA8 MO) 267 F2d 824. ROBERTS V. ROSS 1965 CA3 VI 344 F2d 747.

SIG Marion Briggs

DATE 8/17/77
119 S. GRAHAM ST
CHAPEL HILL, NO. CAR.

Rcd. 8/17/77

PROOF OF SERVICE

Service on the Governor of North Carolina was made by certified mail wherein a copy of the Notice of Appeal to the United States Court was dispatched to the State Capitol Building, Raleigh, N.C.

A copy of the Notice of Appeal to the United States Supreme Court was served on the Attorney General's office by certified mail, N. C. Justice Building, Raleigh, N.C.

A copy of the Notice of Appeal to the United States Supreme Court was served on rhe Supreme Court of North Carolina by certified mail dispatched to the North Carolina Justice Building, Raleigh, N.C.

A copy of the Request for a Separate Filing of Facts and Conclusion of Law was served on the judges of the Fourth Circuit Court of Appeals by certified mail to the Clerk's Office, Fourth Circuit Court of Appeals, Richamond, Virginia.

THE SUPREME COURT
OF NORTH CAROLINA

MARION BRIGGS

v.

NORTH CAROLINA

COMPLAINT OF
MALICIOUS PROSECUTION

Plaintiff for his complaint avers and says that he has been maliciously prosecution in three instances for a time span that exceeds two years. This action arises under reasoning and provisions of general statute's § 7A-25 § 15A-606 § 15A-957 § 84-2.1. §§17-28, 17-2 § 15A-702 § 20-112 as herein more fully appears.

On August 1st 1974 the sheriff's department dispatched a detail of two men in service of a capms ordered by Judge Sheirk of the 21st Jurisdical District. As a consequence of this wanton act plaintiff was denied the right to a probable cause hearing. Upon reporting for trial plaintiff ask the prosecution to state their claim. Then and there a nol pros was entered which is still in want of stipulation and jurisdiction.

Leon Scurlock employee of the Chapel Hill Housing Authority perfected by means of perjury, an action of ejectment this matter was prosecuted by Mr. Martin another staff member of the Housing Authority, neither of whom was

permitted to practice law. United with an abuse of discretion, the prosecution prevailed. Plaintiff appeal this matter but could not force Magistrate Merritt to setforth the decision in writing and the appeal was aborted from want of official acts. On or about September 3rd 1975 plaintiff presented to the Court an application for an arrest in perjury. This application was rejected, (an abuse of discretion).

Magistrate Hackney accepted an affidavit for criminal non support and issued warrant for the same against plaintiff making it necessary for bond to be posted to regain freedom as plaintiff would not enjoy a probable cause hearing.

PART II

Plaintiff requested a jury trial and it was set for the September term of 1975 plaintiff was present when the case was called. It was moved to a later term. Without the force of stipulation of the defense in the October term plaintiff was called again to answer the same charge exception and motion notwithstanding in this trial no clear issues were developed the prosecution was so vague that the Defense could not reasonably be expected to frame a defense.

The prosecution presented only one witness who's competence the defense contends was not above question however the jury was convinced beyond any reasonable doubt. Judge Canady committed plaintiff to the custody of Sheriff Knight, after accepting and acknowaging

The Supreme Court
of North Carolina

MARION BRIGGS

v. CERTIFICATE OF SERVICE

NORTH CAROLINA

One copy be served upon his excellance Governor Holhouser.

One copy be served upon the Chapel Hill Housing Authority.

One copy be served upon 21st Judicial District.

One copy be served upon Sheriff Dept. of Orange County.

"a notice of appeal" with no response from the Clerk's office on preparation of transcript and docketing of the appeal. Plaintiff applied for hebeas corpus with the express hope of having a claim stated by the prosecution the Sheriff's Department tendered a supension of this writ by withdrawing the mailing privlege that are enjoyed in all jails.

Plaintiff's auto was given away by someone at the police station as an abandon car with tags, inspection sticker, and insurance, all intact, and valid.

Wherefore plaintiff pray judgement in the amount of three million dollars.

Marion Briggs
119 S. Graham
Chapel Hill, N.C.

THE SUPREME COURT OF
NORTH CAROLINA

MARION BRIGGS

v. NOTICE OF APPLICATION FOR DEFAULT JUDGMENT

NORTH CAROLINA

To: His Excellence the Governor, or
Delegated Authority

Please take notice that plaintiff above named will make application to the Court of the Entitled action above caption for judgment for relief demanded in the complaint.

This application will be made on the ground that you are in default, and applicant is entitled to judgment against you as prayer for, in that no issue was taken with the allegations setforth in the complaint, there further being no answer or reply on behalf of complaint.

Marion Briggs
119 S. Graham Street
Chapel Hill, N.C.

H

U.S.C.A. 4th Cir. #77-1176

July 18 1977

PER CURIAM

A review of the record and of the district court's opinion discloses that an appeal from the order of the district court denying the removal of appellant's criminal prosecution from state to federal court would be without merit. See Johnson v. Mississippi, 421 U.S. 213, 219-22 (1975). Accordingly, the judgment of the district court is affirmed for the reasons stated in its order. North Carolina v. Briggs, No. 76-0050 (E.D.N.C. Nov. 26, 1976).